

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

LA.App.No. 1035 of 2004()

LAR.11/2001 of PRL.SUB COURT, KOZHIKODE
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APPELLANT: RESPONDENT

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

RESPONDENTS: CLAIMANTS/RESPONDENT NO.2

1. PALLIYARA KARTHIAYANI AMMA,
VENGERI, KOZHIKODE.

2. PADMINI, VENGARI, KOZHIKODE.

3. JANARDHANAN, VENGARI, KOZHIKODE.

4. RADHAKRISHNAN S/O. AMMU AMMA.

*(5. PALLIYONA AMMU AMMA,
P.O.MALAPARAMBA, VENGARI, KOZHIKODE). *DIED.

6. THE EXECUTIVE ENGINEER, N.H.DIVISION,
KOZHIKODE.

*ADDL. RESPONDENTS IMPELADED.

ADDL.R7. JAYAPRAKASINI. K.P., D/O. LATE AMMU AMMA,
AGED 48 YRS, KURUVEETIL THAZHAM,
P.O.MALAPARAMBA, CALICUT - 9.

ADDL.R8. SUJAYA KUMARI.K.P., D/O (LATE) KIZHAKA PALLIYANA
AMMU AMMA, AGED 44 YEARS, TAILOR, VENGARI AMSOM,
NEDUNGOTTOOR DESOM, KOZHIKODE DISTRICT.

ADDL.R9. AJITHA KUMARI, D/O (LATE) KIZHAKA PALLIYANA
AMMU AMMA, AGED 44 YEARS, TAILOR, VENGARI AMSOM,
NEDUNGOTTOOR DESOM, KOZHIKODE DISTRICT.

ADDL.R10. USHA KUMARI, D/O (LATE) KIZHAKA PALLIYANA
AMMU AMMA, AGED 44 YEARS, TAILOR, VENGARI AMSOM,
NEDUNGOTTOOR DESOM, KOZHIKODE DISTRICT.

ADDL. RESPONDENTS 7 TO 10 IMPEADED AS LEGAL HEIRS OF DECEASED R5
VIDE ORDER DT. 10-3-2005 IN I.A.NO.761/2005.

BY ADV. SRI.P.V.KUNHIKRISHNAN
SRI.P.V.KUNHIKRISHNAN
SMT.ARLISS TRENCY ANTONY

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 29/11/2007, ALONG WITH L.A.A.NO.1040/2004 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

**L.A.A.Nos.1035, 1040 & 1075 of 2004,
450, 470, 585, 729 & 821 of 2005,
and 347 of 2006**

Dated this the 29th day of November, 2007

JUDGMENT

Kurian Joseph,J.

State is the appellant in all these cases. They are aggrieved by the fixation of land value in respect of acquisition for Calicut Bye-pass. The notification is of the year 1993. The property is situated in Vengeri Village. The claimants sought to rely on Exts.A1 to A3. The reference court rightly found that Ext.A1 could not be relied on since the value of the building and kuzhikoors were not separately shown. As far as Ext.A2 is concerned it was found that there was no evidence as to the similarity or comparability of the property with the acquired property. As far as Ext.A3 also is concerned, it was observed by the reference court that there was no evidence regarding the similarity and comparability of the property with the acquired property. However, the reference court observed that the Advocate Commissioner had not reported that the acquired

L.A.A.No.1035/2004 &
connected cases.

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property is not dissimilar when compared to Ext.A3 and hence it was assumed that the same is similar and on that basis and also taking note of the importance of the locality the marked value was fixed at Rs.47,500/- per cent.

2. The learned Government Pleader submits that in L.A.R.No.499/1997 the reference court fixed the land value at Rs.25,000/- and that judgment has been satisfied also. However, the learned counsel appearing for the claimants submits that the property in L.A.R.No.499/1997 is not similar and comparable to the property covered by these cases.

3. Having extensively heard the counsel on both sides it is fairly clear that though to some extent guess work is permissible in the matter of fixation of market value, the reference court has gone beyond all limits and fixed the land value only on the basis of assumption, and that too on verifiable facts regarding similarity. The learned counsel for the claimants pray for an opportunity before the reference court for establishing their case regarding the similarity and comparability of the acquired property with the property covered by Exts.A1 to A3. In the

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interests of justice we are of the view that it is only proper that such an opportunity is given to the parties.

4. Accordingly we set aside the judgment and decree in these cases and remit the matters to the reference court. The reference court shall also look into the judgment in L.A.R.No.499/1997 and any other evidence adduced by the claimants. The reference shall be answered within a period of six months from the date of appearance of the parties. The parties shall appear before the reference court on 7-1-2008.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.

**KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.**

**L.A.A.Nos.1035, 1040
& 1075 of 2004,
450, 470, 585, 729
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JUDGMENT

29th November, 2007